

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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*Proposed Counsel to the Debtor  
and Debtor in Possession*

In Re:

ASSUNCAO BROS., INC.,

Debtor.

Chapter 11 (Subchapter V)

Case No. 22-16159-CMG

Judge: Hon. Christine M. Gravelle

**CERTIFICATION OF MARTIN ASSUNCAO IN SUPPORT OF DEBTOR'S MOTION  
FOR ENTRY OF AN ORDER AUTHORIZING REJECTION OF CERTAIN  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES EFFECTIVE AS OF THE  
PETITION DATE**

I, MARTIN ASSUNCAO, being of full age, hereby certify pursuant to 28 U.S.C. § 1746, under penalty of perjury as follows:

1. I am the President of Assuncao Bros., Inc. (the "Debtor"), the debtor and debtor-in-possession in the above-captioned chapter 11, subchapter v case (the "Subchapter V Case"), and in that capacity, I am fully familiar with the Debtor's business operations, assets, liabilities, and business records, and I submit this Certification in support of the Debtor's Motion ") for entry of an order authorizing the rejection of certain executory contracts and unexpired leases effective

as of the date of the Debtor's bankruptcy filing.

2. Unless otherwise stated, all facts set forth herein are based on my personal knowledge, my review of relevant documentation of the Debtor, information provided to me by the Debtor's employees and professionals, or my opinion based on my experience and knowledge with respect to the operations and financial affairs of the Debtor. If I were called upon to testify, I would testify competently to the facts set forth in this Declaration. I am authorized to submit this Certification on behalf of the Debtor.

3. On August 3, 2022 (the "Petition Date"), the Debtor filed a voluntary petition for relief under subchapter v of chapter 11 of the United States Bankruptcy Code. The Debtor continues to operate its business and manage its property as a debtor-in-possession in accordance with section 1184 of the Bankruptcy Code. No trustee or examiner has been appointed in the Subchapter V Case.

4. As set forth in greater detail in my *Declaration in Support of Voluntary Petition and First Day Motions* [D.I. 8] filed shortly after the petition filing, the Debtor is a contractor specializing in concrete services, including, but not limited to, curb, sidewalk, bridge, barriers, and slabs. The Debtor is a family-owned business that has been operating since 1958.

5. The Debtor has contracts to work on both bonded and non-bonded projects throughout the State of New Jersey. As of the Petition Date, the Debtor was contracted to provide concrete-related services for nineteen (19) unbonded projects (the "Non-Bonded Projects") and fourteen (14) bonded projects (the "Bonded Projects" and together with the Non-Bonded Projects, the "Active Projects").

6. Unfortunately, the Debtor, like so many other businesses, experienced extraordinary challenges and setbacks over the last 24 months due to the COVID-19 pandemic

which resulted in delays starting projects and disruption in management of projects by having to replace managers and workers that were unfamiliar with the projects.

7. The Debtor encountered the following industry challenges especially relating to municipal projects: (i) less gross profit margins for the work while the cost of materials and labor increased significantly; (ii) working capital constraints – long term projects requiring significant time and expense to complete with the majority of payment upon completion; and (iii) collection issues.

8. On August 5, 2022, the Debtor filed a *Motion for Entry of Order (I) Authorizing the Sale of Certain of the Debtor's Assets to Vollers Excavating and Construction, Inc., (II) Approving Settlement, (III) Authorizing Debtor to Enter Into Subcontracts with Vollers for Certain Non-Bonded Projects, and (IV) Authorizing the Debtor to Assume and Assign Certain Executory Contracts and Unexpired Leases* (the “Sale Motion”) [D.I. 25]. Through the Sale Motion, the Debtor, among other things, seeks authority to sell certain assets to Vollers Excavating and Construction, Inc. (“Vollers”), and enter into subcontracts with Vollers whereby Vollers would complete twelve (12) of the Debtor's Non-Bonded Projects (the “Subcontracted Projects”).<sup>1</sup> A hearing on the Sale Motion is scheduled for August 22, 2022.<sup>2</sup>

9. The Debtor lacks the resources to continue work on the remaining Non-Bonded Projects (the “Rejected Ongoing Projects”) and no third parties have expressed interest to the Debtor in continuing those projects on a subcontractor basis or taking assignment of the underlying contracts. Since the Debtor will not derive any further financial benefit from the Rejected Ongoing

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<sup>1</sup> A list of the Subcontracted Projects is included in Schedule 1.01(a) annexed to the Asset Purchase Agreement attached as Exhibit A to the Sale Motion.

<sup>2</sup> In addition to the proposed transactions in the Sale Motion, Vollers has also agreed to provide the Debtor with post-petition financing, which the Court has approved on an interim basis. *See Interim Order (I) Authorizing (A) Post-Petition Financing and (B) Use of Cash Collateral and Affording Adequate Protection; (II) Modifying the Automatic Stay; and (III) Scheduling a Final Hearing* entered on August 4, 2022 [D.I. 23].

Projects, and has not derived any benefit on those projects since the Petition Date, the Debtor has determined in its business judgment that rejection of the contracts for the Rejected Ongoing Projects is appropriate and in the best interests of the estate. The Debtor is also a party to certain contracts for projects which the Debtor recently completed its work prior to the Petition Date (the “Rejected Completed Projects” and together with the Rejected Ongoing Projects, the “Rejected Projects”). Out of an abundance of caution, the Debtor has determined to reject the contracts for the Rejected Completed Projects, particularly given that the Debtor will not be performing any further services in connection with those contracts. Additionally, the Debtor is a party to certain leases for vehicles and equipment (the “Rejected Equipment Leases”) that the Debtor has no use for going forward. A list of the executory contracts and unexpired leases to be rejected, including with respect to the Rejected Ongoing Projects, the Rejected Completed Projects, and the Rejected Equipment Leases (collectively, the “Rejected Contracts”), sorted alphabetically by counterparty, is attached hereto as **Exhibit A**.

10. The Debtor, with the assistance of its advisors, has assessed the costs and benefits of each of the Rejected Contracts, and the Debtor has determined in its business judgment that rejecting of each of the Rejected Contracts as of the Petition Date is in the best interests of the Debtor, its estate, and interest parties. In particular, the Debtor has not performed any work on any of the Rejected Projects since the Petition Date. The Debtor also no use going forward for the equipment subject to the Rejected Equipment Leases. The Debtor has thus derived no benefit under the Rejected Contracts since the Petition Date and will not derive any benefit going forward. The Debtor therefore believes that rejecting the Rejected Contracts effective as of the Petition Date is appropriate as doing so will minimize any ongoing obligations and liabilities that might accrue to the estate, thereby preserving value for the estate.

11. Based on the foregoing, it is respectfully requested that the Court enter an order authorizing the Debtor's rejection of the Rejected Contracts set forth in Exhibit A effective as of the Petition Date.

I certify that the foregoing statements made by me are true and I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: */s/Martin Assuncao*  
Martin Assuncao

Dated: August 16, 2022

# EXHIBIT A

| Counterparty                         | Rejected Contract/Lease Description                        | Proposed Rejection Date |
|--------------------------------------|--|-------------------------|
| Anselmi & DiCicco, Inc               | Project: NJ DOT 46   | August 3, 2022          |
| Chrysler Capital                     | Equipment Lease: 2019 Jeep Grand Cherokee                  | August 3, 2022          |
| Earle Asphalt Inc.                   | Project: Improvements To Halls Mills Road                  | August 3, 2022          |
| Essex County, New Jersey             | Project: 9 Intersections Various                           | August 3, 2022          |
| Essex County, New Jersey             | Project: 9 Intersections Park Avenue                       | August 3, 2022          |
| Hudson County, New Jersey            | Project: JFK Boulevard Improvements                        | August 3, 2022          |
| Hunterdon County, New Jersey         | Project: Route 616 - Resurfacing And Drainage              | August 3, 2022          |
| Komatsu Financial                    | Equipment Lease: D39 PX-24 Dozer                           | August 3, 2022          |
| Middlesex County, New Jersey         | Project: Forsegate & Rossmore                              | August 3, 2022          |
| Monmouth County, New Jersey          | Project: U-15 Bridge Replacement                           | August 3, 2022          |
| Monroe Township, New Jersey          | Project: Matchaponix                                       | August 3, 2022          |
| Morristown Township, New Jersey      | Project: AB-18-0315 Washington St.                         | August 3, 2022          |
| Ocean County, New Jersey             | Project: Traffic Signal at Prospect st & Massachusetts Ave | August 3, 2022          |
| Passaic County, New Jersey           | Project: Kingland Road Bridge                              | August 3, 2022          |
| Piscataway Township, New Jersey      | Project: Drake Lane Improvements                           | August 3, 2022          |
| Somerset County P.W.                 | Project: Meeker Road                                       | August 3, 2022          |
| Somerset County P.W.                 | Project: SC-17-0717 Pedestrian Safety                      | August 3, 2022          |
| Township of Raritan, New Jersey      | Project: Sunny Hills Section II                            | August 3, 2022          |
| Wells Fargo Equipment Finance        | Equipment Lease: DynaPac Roller                            | August 3, 2022          |
| Z Brothers Concrete Contractors, INC | Project: Livingston Avenue                                 | August 3, 2022          |